

2010

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TaxFORUM

The Office of Professional Responsibility

Standard Bearer for Integrity in Tax Practice

Circular 230 *“A Primer”*



What is OPR?

Educate and communicate – internal and external

Recipient of allegations of misconduct

Independent research and investigation

Determines Fitness to Practice

Recommends appropriate sanctions

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What is Circular 230?

Enabling legislation = 31 U.S.C. 330

Treasury Regulations for standards of
“practice” before the IRS= 31 CFR
Subtitle A, Part 10 et seq. (1886)

Governs recognition of, and practice
standards for, attorneys, certified public
accountants, enrolled agents, registered
tax return preparers, and others
representing taxpayers before the IRS

What is “Practice Before the IRS”

All matters connected with a presentation to the IRS relating to taxpayer’s rights, privileges, or liabilities under laws or regs administered by IRS

includes preparing or filing documents; communicating with the IRS; written/ oral tax advice; representation at meetings, etc. 10.2(4).

Tax return preparation = Practice

Circular 230

Where can I get one? Online at
www.irs.gov/pub/irs-pdf/pcir230.pdf.

Substantial revisions as of August 2, 2011.

Form 2848 attestation.

Guidance for all administrative practice
conduct.

Do I need one? Yes.

WHY?

Some Key Regulations

Diligence as to Accuracy

Due Diligence Standards with Respect to
Tax Returns, Documents, Affidavits,
etc.

Negotiation of Taxpayer Checks

Assistance from or to Disciplined
Persons

Diligence as to Accuracy (10.22)

Must exercise Due Diligence in:

- Preparing, approving and filing tax returns, documents, affidavits etc. relating to IRS matters
- Determining correctness of oral/written representations made to the client or to Treasury personnel

Is Reliance on Another's Work Product
OK?

- With Reasonable Care.

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Standards for Tax Returns

New 10.34(a)

May not sign a tax return or advise a position on a tax return, if:

1. Lacks reasonable basis
2. Unreasonable position
(6694(a)(2))
3. Willful attempt to understate liability (6694(b)(2)(A))
4. Reckless, intentional disregard of rules and regulations
(6694(b)(2)(B))

Patterns matter

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Standards for Documents and Other Papers- 10.34(b)

May not advise taking **Positions** that are
Frivolous.

May not advise **Submissions**:

- to delay or impede tax administration
- that are frivolous
- Containing or omitting information that demonstrates an intentional disregard of rules or regulations.

Penalties and Client Reliance- 10.34(c), (d)

Must Advise Client of Potential Penalties and
their Avoidance through Disclosure

Reliance on Client Information **in good faith**,
without verification, is OK, **but...**

- Cannot ignore implications of other
information furnished
- Cannot ignore actual knowledge
- Must make reasonable inquiries for incorrect,
inconsistent information

No Willful Blindness.

No “Don’t ask, don’t tell”

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Due Diligence Hypo #1

New clients - H & W, successful professionals who both work full time, travel for work.

Tax questionnaire- 2 children ages 5 and 7 w/SSN's.

No reference to child care expenses on the questionnaire, or in conversation.

Do you have to ask the taxpayers whether they have a nanny for the children, or other household help?

What if they say “not anyone we pay”?

Further inquiry required?

Due Diligence Hypo #1 (cont.)

What if:

Graduate Student from Europe lives with them?

Student visa – no work allowed.

TP's provide room and board; buy her personal incidentals; small allowance.

GS has gone on three family vacations (all expenses paid)- watches children, esp. at night, so the couple can have some “alone” time.

Now what?

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Due Diligence Hypo #2

Friend, dentist, client .

S-corp w/outside bookkeeper –
QuickBooks.

You get QB ledger for corp tax prep.

“Personal” recorded as loan to
shareholder in QB.

Everything else = business expense.

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Due Diligence Hypo #2 (cont)

Gross income = \$748,000

Expenses:

- Wages paid to dentist \$106,800
- Legal fees \$50,000
- Landscaping \$7,500
- Contract labor \$200,000 (new exp)
- Travel & Entertainment \$25,000

Can you rely on the Bookkeeper?

Any Other Questions?

Due Diligence Hypo #2 (cont)

What if you know:

Expenses were characterized on invoices by the client?

Contentious divorce in tax year with substantial child-support?

Dental office in a high-rise?

What about T&E?

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Negotiation of Taxpayer Checks (10.31)

No cashing

No endorsing

No depositing to trust account

No split electronic transfers

Client concurrence is irrelevant

IRC 6695(f) penalty

Negotiation of Taxpayer Checks Hypo

Potential client with no money wants tax preparation.

Quick analysis shows a refund due.

Can you ask to deduct your fee from his refund?

What if the taxpayer offers?

Assistance from or to disbarred or suspended persons (10.24(a))

No assistance from ... No assistance to...

Knowingly – Directly or Indirectly

All matters constituting practice before IRS

Practice = Tax return preparation

Practice = Preparing supporting scheds for
use in Audit or Collection matters

Practice = Written tax advice

Practice = Representation

Assistance from, or to, Disciplined persons (10.24)

Good friend – 2 year suspension – for
personal tax non-compliance

You – Tax prep & Controversy

GF needs work

Can you have her:

- Prepare but not sign returns?
- Organize TP data for audit?
- Prepare summary scheds for audit?
- Prepare client for IRS audit interview?

Complaints or Inquiries?

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For more info on OPR and Circular 230
visit:

www.irs.gov/irs/article/0,,id=175512,00.html